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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-861

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,
Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,
Respondents.

On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Questions Presented

(1) Whether a Housing Authority can constitutionally contract to sell land in an urban renewal area which

it has the legal authority to acquire but has not yet acquired?

(2) Does the execution of a contract to sell to be acquired land to a private developer without personal notice to the property owner constitute a taking or confiscation of such property without due process of law?

(3) Is due process violated by the Housing Authority's sale of land in an urban renewal area after publication of a notice soliciting proposals to purchase when, in fact, the Housing Authority could have negotiated the sale of said land without having first solicited proposals by public advertisement?

Statement of the Case

Respondent, Housing Authority of the City of East Orange, placed an advertisement in the Newark News on April 30, 1969 soliciting proposals for the purchase and redevelopment of Parcel H-9 in its Fourth Ward Urban Renewal Area. Parcel H-9 consisted of Lots 1 through 7 in Block 46, as well as a portion of a public street to be vacated. Approximately one month later, the Housing Authority selected Metro Motors, Inc. as the successful bidder and subsequently executed a sale and development contract with said developer. Portions of Parcel H-9, including Lot 6 owned by Petitioner, Florence Leff, had not yet been acquired by the Housing Authority at the time the Housing Authority selected Metro Motors, Inc. as the developer.

On April 30, 1970, the Housing Authority filed a Complaint in condemnation against Lot 6 and acquired title thereto on May 7, 1970 after having filed the necessary

Declaration of Taking and deposited the sum of $40,000.00, the estimated value of the property, with the Clerk of the Superior Court of New Jersey.

Despite the fact that the Housing Authority has legal title to Lot 6 and is entitled to possession, the Petitioners have stubbornly refused to vacate the premises thereby preventing the Housing Authority from demolishing the building thereon and conveying the land in a cleared condition as required by its sale contract with the developer.

Reasons for Denying the Writ

Respondent knows of no statute or case law which prohibits a Housing Authority from contracting to convey title to land not yet acquired to a redeveloper in an urban renewal area at some time in the future. Such law, if existent, would cause extensive delay in the completion of an urban renewal project and result in substantially increased costs to the municipality and federal government. The most efficient and least costly method of undertaking an urban renewal project is to select the developer immediately after the finding of blight and approval of the urban renewal plan and prior to the acquisition of lands by the Housing Authority. HUD specifically authorizes this course of action in its Urban Renewal Handbook, RHA 7214.1, Chapter 4, Section 1, wherein it states on page 4:

> "Prior to the issuance of an invitation for proposals, land acquisition, site clearance, and project improvement works shall have progressed to the point that title to, or possession under a lease, of the land or property may be delivered to the redeveloper within a reasonable time after his selection."

The Housing Authority complied with this regulation by acquiring title to Lot 6 approximately one year after solicitating proposals.

Petitioner's property was not acquired or taken by the Housing Authority until May 7, 1970 at which time a Declaration of Taking was filed and the estimated just compensation in the amount of $40,000.00 was deposited with the Clerk of the Superior Court. Up until that time there was no interference with Petitioners' title to or possession of the premises. In fact, the tenant Petitioner continues to remain in possession of the premises to this date.

Petitioners had adequate notice that Lot 6 was to be acquired by the Housing Authority. All the prerequisites to the institution of the condemnation suit were satisfied. The Planning Board held publicly advertised hearings on May 5 and 11, 1966 after having given written notice of same to all propery owners within the project area. Mrs. Leff acknowledged receipt of her certified letter on April 23, 1966. In addition to finding the area blighted, the Planning Board and City Council received and approved the proposed Redevelopment Plan for the area at these hearings. The Redevelopment Plan specifies that Lot 6 is to be acquired, consolidated with other lands and sold as Parcel H-9. Petitioners' property was acquired by condemnation and not by the execution of a sales contract with the redeveloper.

The Housing Authority's advertisement soliciting proposals for the purchase of Parcel H-9 was not inserted in the newspaper for the purpose of giving notice to Petitioner or other property owners that their properties were going to be acquired by the Housing Authority. The ad was for the obvious purpose of attracting bids from developers and sufficiently identified and located the

parcels to be sold for that purpose. Interested bidders were clearly advised to "contact the Executive Director of the East Orange Housing Authority for further information relating to the sale and redevelopment of the within described land." (Invitation for Proposals, Appendix A, pages 1a-2a). Upon contacting the Executive Director, interested bidders were given a package of materials known as the Proposal Documents which included Instructions to Redevelopers, and a Disposal Map (Appendix B, page 3a) which shows the exact location of Parcel H-9 including the fact that there were to be no intervening not to be acquired lots between Parcels H-9 and H-10. The Executive Director or a member of his staff was always available to provide additional information or clear up any ambiguities.

Personal notice of the proposed sale of Parcel H-9 was not given to the Petitioner owner of Lot 6 for two reasons. First, there is no legal requirement to do so, and, second, the owner never indicated an interest in being a developer. Had the Housing Authority been aware of any such interest, it would have sent him a personal notice just as it did to many other would be potential developers.

The authority to acquire and dispose of land for redevelopment purposes as a public use and purpose is clearly established in our law. The New Jersey Constitution, Art. VIII, Sec. III, par. 1 declares:

> "1. The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment * * *."

Housing Authorities are authorized by the legislative enactment of N.J.S. 55:14A-34 (5) "to sell or lease land so acquired for uses in accordance with the redevelopment plan." More specifically, "The authority may make land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan." N.J.S. 55:14A-41.

The leading case upholding the constitutionality of redevelopment statutes similar to the Local Housing Authorities Law of N. J. (55:14A) is *Berman* v. *Parker*, 348 U. S. 26, 75 S. Ct. 98 (1954). The U. S. Supreme Court declared therein that the acquisition and assembly of property and the sale thereof for housing, commercial or industrial reuse pursuant to a project area redevelopment plan constitutes a public use. The Court went on to say, that once the public purpose had been established, it made no difference that the property of one businessman was taken for the benefit of another businessman.

The N. J. Supreme Court in *Wilson* v. *Long Branch*, 27 N. J. 360 (1958) has adhered closely to the doctrine set forth in the *Berman* case, *supra*, while upholding the constitutionality of the Blighted Areas Act (N.J.S. 40:55-21.1 *et seq.*).

Most recently, the N. J. Supreme Court has stated:

> "Once a proper declaration of blight is made, there is no substance to the contention that the result of the governmental action in selecting a redeveloper is to take property from one individual and turn it over to another in violation of the due process requirements of the Federal Constitution. The Blighted Area Act provides that following a declaration of blight the governing body may, by resolution, agree that a private Corporation or

individual may be chosen to undertake the redevelopment project according to a comprehensive plan created by it. N.J.S.A. 40:55-21.10. In this event, the private redeveloper is really the instrumentality used to accomplish the public purpose. And the possibility that some profit may eventuate therefrom does not render such means unlawful. Neither the Federal nor the State Constitution presents a barrier to such municipal course of action." (Cites *Berman* and *Wilson* cases *supra.*) *Levin* v. *Bridgewater Leasing Corp. et al*, 57 N. J. 506 (1971) at pages 45, 46.

Housing Authorities are authorized to sell lands in a variety of ways including negotiation, auction and competitive bidding after public advertisement (Appendix C, page). As Judge Antell points out in his opinion (Petitioner's Appendix D, page 8a), the Housing Authority was not required to advertise for bids and could have negotiated the sale of Parcel H-9. The intention of the Respondent was to attract the widest interest and obtain the best possible proposal. If any technical, minor deficiencies appeared in its form of advertisement, such defect had little or no effect upon interested prospective bidders.

For these reasons the Respondent respectfully requests that Petitioners' application be denied.

Edward Stanton,
134 Evergreen Place,
East Orange, New Jersey 07018
Counsel for Respondent.

[Appendices Follow]

APPENDIX A

Housing Authority's Invitation for Proposals for the Purchase and Redevelopment of Industrial Lands

Invitation for Proposals

The Housing Authority of the City of East Orange invites proposals for the purchase and redevelopment of one or more of the hereafter described industrial lands located in its Fourth Ward Urban Renewal Project Area:

Parcel Numbered	*Total Area Square Ft.*	*Land Use*	*Fixed Sale Price Sq. Ft*	*Fixed Sales Price*
H-9	85,502	industrial	$.63	$53,866.
H-10	18,325	industrial	.63	11,544
H-11	20,463	industrial	.70	14,324

The above lands are offered for sale and redevelopment either individually or as one parcel pursuant to applicable Federal and State Housing Laws. Specifically, the lands must be redeveloped in accordance with the provisions of the East Orange Urban Renewal Plan which constitutes part of the proposal Documents.

Submission of Proposals

No proposal will be accepted unless the prospective purchaser-developer has first acquired a copy of the Proposal Documents which may be obtained from the Housing Authority Office upon the payment of a non-returnable

fee of $10.00. All proposals must comply with the instructions contained in the Proposal Documents. Proposals to purchase land must be delivered to the Office of the Housing Authority of the City of East Orange, City Hall, East Orange, N. J., prior to 2:00 p.m. DST on Friday June 6, 1969 at which time all Proposals will be opened and read aloud. The successful redeveloper or redevelopers will be required to execute a Contract for Sale of Land substantially in the form of the Contract made a part of the Proposal Document within 30 days after being notified of his selection.

Additional Information

Interested parties may contact the Executive Director of the East Orange Housing Authority for further information relating to the sale and redevelopment of the within described land.

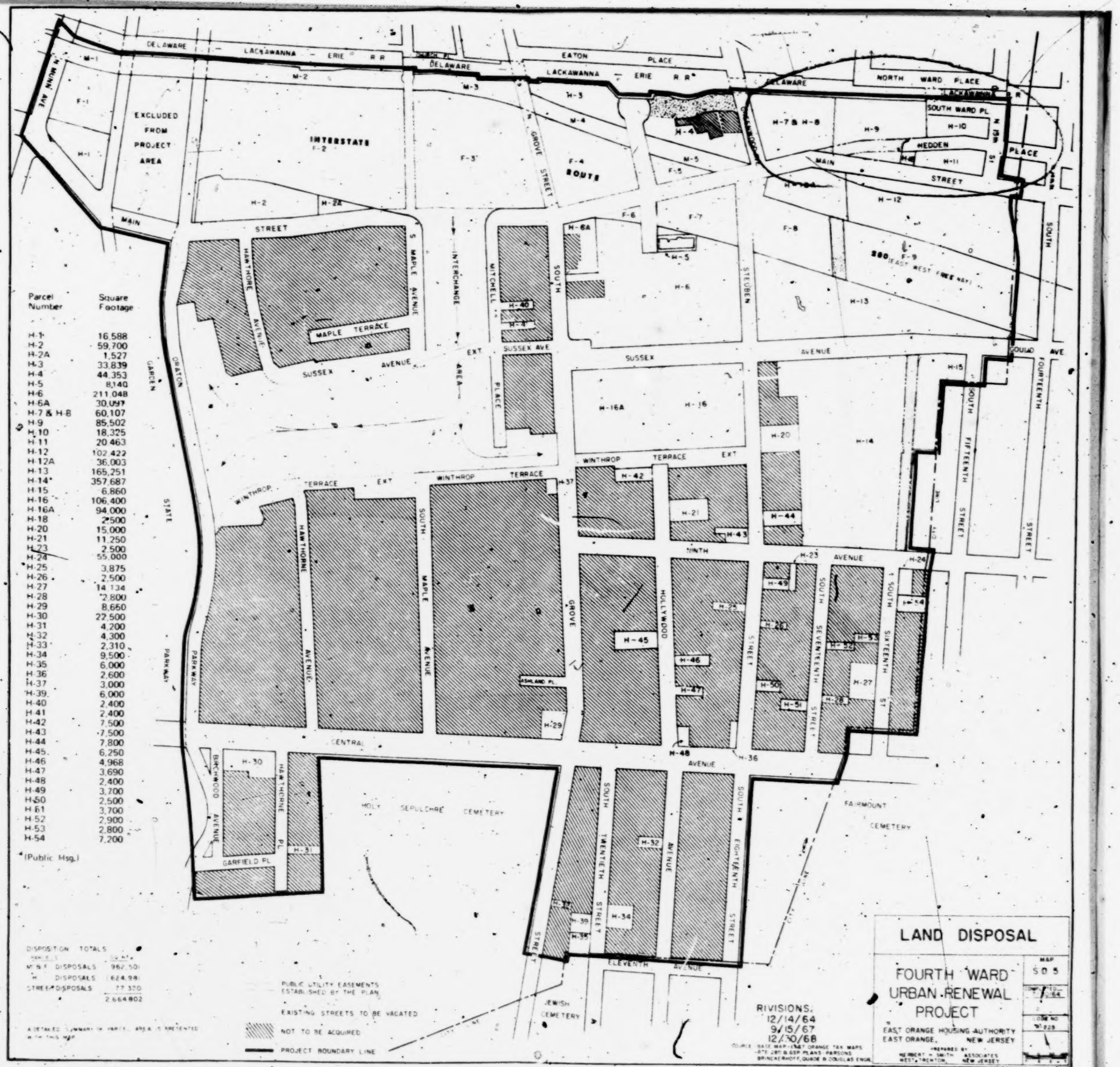
ROBERT M. TAGUE
Executive Director
Housing Authority of the City of East Orange

APPENDIX B

Proposal Document—Land Disposal Map

[PHOTOSTAT]

(Opposite)



Parcel Number	Square Footage
H-1	16,588
H-2	59,700
H-2A	1,527
H-3	33,839
H-4	44,353
H-5	8,140
H-6	211,048
H-6A	30,097
H-7 & H-8	60,107
H-9	85,502
H-10	18,325
H-11	20,463
H-12	102,422
H-12A	36,003
H-13	165,251
H-14*	357,687
H-15	6,860
H-16	106,400
H-16A	94,000
H-18	2,500
H-20	15,000
H-21	11,250
H-23	2,500
H-24	55,000
H-25	3,875
H-26	2,500
H-27	14,134
H-28	2,800
H-29	8,650
H-30	22,500
H-31	4,200
H-32	4,300
H-33	2,310
H-34	9,500
H-35	6,000
H-36	2,600
H-37	3,000
H-39	6,000
H-40	2,400
H-41	2,400
H-42	7,500
H-43	7,500
H-44	7,800
H-45	6,250
H-46	4,968
H-47	3,690
H-48	2,400
H-49	3,700
H-50	2,500
H-51	3,700
H-52	2,900
H-53	2,800
H-54	7,200

*(Public Msg.)

DISPOSITION TOTALS

	SQ. FT.
M.S.F. DISPOSALS	962,501
H DISPOSALS	624,981
STREET DISPOSALS	77,320
	2,664,802

A DETAILED SUMMARY BY PARCEL AREA IS PRESENTED WITH THIS MAP

APPENDIX C

Standard Methods of Offering Land to Private Developers

URBAN RENEWAL HANDBOOK
RHA 7214.1
LAND MARKETING AND REDEVELOPMENT
CHAPTER 4 SECTION 1

CHAPTER 4. SELECTION OF REDEVELOPERS

SECTION 1. STANDARD METHODS OF OFFERING LAND TO PRIVATE REDEVELOPERS

Six Standard Methods

HUD has established six standard methods for offering project land to private redevelopers for redevelopment:

(1) Fixed-Price Competition—The price is announced in advance. Competition is based on factors other than price, such as design, qualifications and organization of the redeveloper, benefits to the community, rents or sales prices, or value of the improvements to be provided by the redeveloper.

(2) Competition-Negotiation Combination—The availability of the land is made known by public announcement, but selection is made after negotiation with one or more redevelopers whose initial proposals have been determined to be most acceptable. A public hearing on the proposal is required prior to execution of the contract.

(3) Sealed Bids—Sealed bids are invited under specific provisions as to the place and cutoff date and

time for the receipt of proposals and for opening and reading of bids.

(4) Public Auction—Land is offered at public auction, with a publicly-announced minimum bid. A variation provides for execution, prior to announcement of the auction, of a firm agreement with a potential redeveloper who agrees to make a specified minimum bid which the LPA agrees to accept if there are no higher bids.

(5) Predetermined Prices for Subdivision of Small Parcels—The LPA establishes the schedule of prices for a subdivision of small parcels of similar character and proposed uses, and then offers the parcels primarily to separate purchasers.

(6) Direct Negotiation With One Or More Redevelopers—In cases where direct negotiation is permitted by law, the LPA may negotiate directly with a redeveloper or redevelopers.

Procedures After Choosing Method

If the LPA has met certain prerequisites, and has elected to adopt one of the standard methods of offering land to a private redeveloper, it may offer the land in accordance with the procedures defined below, and in Section 2 of this Chapter, without obtaining prior concurrence of the Regional Office.